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FRAN RICKARD,
 Complainant,

v.

DEPARTMENT OF INDUSTRY, LABOR
 AND HUMAN RELATIONS,
 Respondent.

Case No. 80-382-PC

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DECISION
 AND
 ORDER

This matter is before the Commission on the respondent's motion to dismiss for lack of subject matter jurisdiction.

This appeal, filed by the chief steward of WSEU Local 1800, states as follows:

We are appealing the hiring of the LTE Project Employees in the Unemployment Compensation Department at the Job Service Office in Green Bay. We feel this is in violation of the Wisconsin Statute 230.27. The work they are doing is a regular and continuing function of the employing agency. Due to the fact that many regular employes have been working overtime for the past year, this cannot be considered an emergency situation.

In Manlove v. DILHR, No. 80-335-PC (4/23/81), the Commission held that it lacked subject matter jurisdiction over an appeal which objected to a decision to fill a position with a project limited term employe. The Commission discussed the question of its jurisdiction as follows:

"The respondent, through her representative, argues in her brief on jurisdiction that 'the decision to create a project position is appealable to the Commission,' as a decision of the administrator or his delegate, pursuant to §230.44(1)(b) and (d), Wisconsin Stats.

"The respondent has not cited any authority for the proposition that the creation of a project position is a decision of the administrator, and the Commission can find none. Section 230.27, the section in the Civil Service code dealing with 'Project employment and appointments,' does not deal with the creation of project positions. Section 16.505 Stats. deals with 'Position authorization' and provides as relevant:

'(1) No position, as defined in §230.03(11), regardless of funding source or type, may be created unless authorized by one of the following:

- (a) The legislature by law or in budget determinations.
- (b) The Joint Committee on Finance acting under §13.101 or as otherwise provided by law.
- (c) The Governor acting under §16.54 or creating positions under §20.001(2)(b) or (c).'

"This cannot be considered an appeal pursuant to §230.44(1)(d) Stats., ('...personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion...') since there has been no indication that there ever was a "certification" for the position in question, which was filled without competition."

For the same reasons as set forth above, the Commission determines that it lacks the authority to hear this appeal and that it must be dismissed.

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ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: Dec. 16, 1981 STATE PERSONNEL COMMISSION

AJT:jmf


DONALD R. MURPHY, Chairperson

Parties

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